UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

In re: MICHAEL G. RUSINACK, Debtor.	Case No. 00-10482-RGM (Chapter 13)

MEMORANDUM OPINION

This case is before the court for confirmation of the debtor's chapter 13 case. The chapter 13 trustee has recommended confirmation and no creditor has filed an objection.

A review of the file reflects that the debtor's plan proposes to pay all creditors in full. The principal debt is to Chase Manhattan Mortgage Corporation ("Chase Manhattan"), the debtor's home mortgagee. The home mortgage is in arrears. The plan states that the arrearage is $6,730.00 and proposes to pay it over a period of 60 months together with interest at the rate 8.25%. Chase Manhattan, however, filed a proof of claim asserting a pre-petition arrearage in the amount of $7,342.84. The proof of claim also states that the debt was incurred on November 22, 1995. In addition, the file reflects that relief from the automatic stay was granted to Chrysler Financial Company, LLC, ("Chrysler") to permit it to repossess the debtor's 1995 Dodge Ram truck. No proof of claim has been filed with respect to this obligation. The schedules reflect only three unsecured creditors with total claims of $1,394.01. The bar date for filing proofs of claims for all creditors except governmental units is June 6, 2000.

In light of the proof of claim filed by Chase Manhattan, it is clear that the debtor's proposed plan will not result in full payment of unsecured creditors. It also appears, preliminarily, that Chase Manhattan may not entitled to interest on its mortgage arrearage. According to its own proof of claim, the debt was incurred after October 22, 1994. Consequently, §1322(e) of the United States Bankruptcy Code is applicable and the default to be cured under the plan is to be cured in accordance with the underlying agreement and applicable non-bankruptcy law. There is nothing in the record to suggest that the underlying agreement provides for interest on the arrearage. Non-bankruptcy law does not provide for interest on the arrearage. If Chase Manhattan is paid its full claim according to its proof of claim together with interest at 8.25%, the plan will be about $800.00 short. This would reduce the payments to unsecured creditors from 100% to about 25%, assuming all three unsecured creditors file a proof of claim. The percentage may change dramatically based on any unsecured deficiency claim that may be filed by Chrysler. At the same time that full payment to the unsecured creditors is in question, the proposed plan may overpay Chase Manhattan at their expense.

A final determination on this matter cannot be made until the bar date for proofs of claim has expired. In these circumstances, the court will provisionally confirm the chapter 13 plan subject to a final confirmation hearing to be held after the bar date for claims for non-governmental claims has expired so as to permit a full evaluation of the plan at that time. The order will further provide that Chase Manhattan will not be paid interest on its claim unless a plan is finally confirmed which provides for interest.

In light of the provisional confirmation of the plan, the trustee is authorized to disburse payments to creditors in accordance with the provisionally confirmed plan with the exception that no interest will be paid to Chase Manhattan.

Alexandria, Virginia
April 13, 2000

Signed Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

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